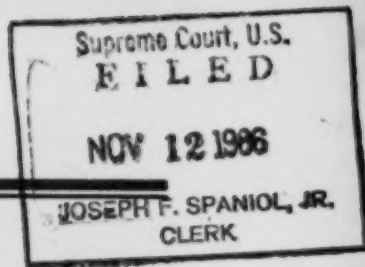


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NO.



IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

S. L. TOWNLEY, et al.

Petitioners,

v.

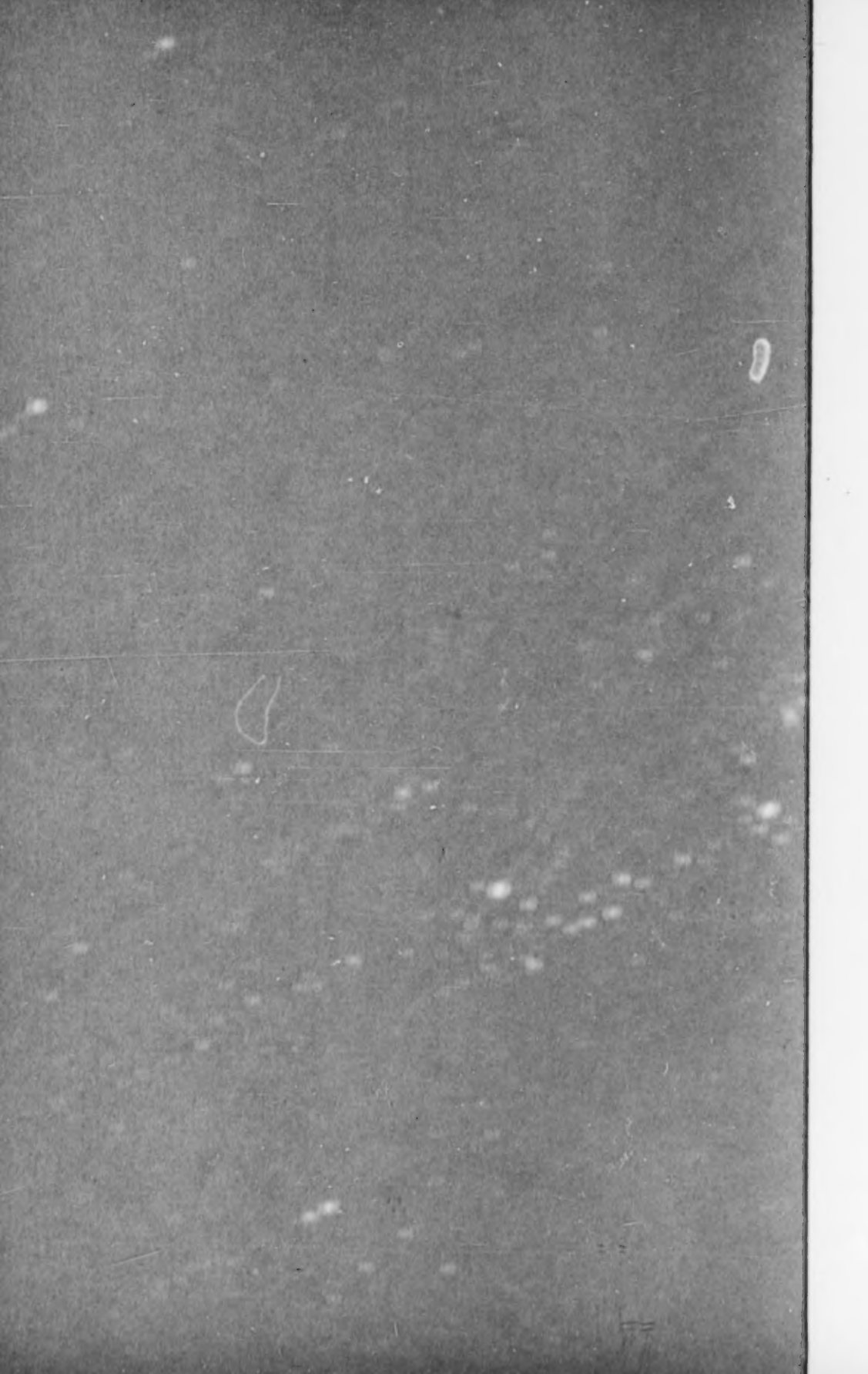
JAMES T. CLARK, JR.,

Respondent.

BRIEF IN OPPOSITION
TO PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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Respondent, James T. Clark, Jr.,
respectfully prays that Petitioners'
Petition for Writ of Certiorari to the
United States Court of Appeals for the
Fourth Circuit be denied.



ARGUMENT

The Court of Appeals properly applied the Stickland test in affirming the district court's granting of relief.

Petitioner's primary argument in support of their petition is that the district court, and the Court of Appeals, in affirming its decision, misapplied this Court's ruling in Strickland v. Washington, 466 U.S. 468 (1984). As discussed below, however, the conduct of counsel fell well below any reasonably acceptable standard, and Respondent was clearly prejudiced at the sentencing phase of his trial by his counsel's ineffectiveness.

The record shows that the guilt phase of Clark's trial consisted of the introduction of a lengthy confession by Clark,

and the sentencing hearing before the jury began immediately thereafter. Counsel for Clark introduced at sentencing only the very brief testimony of Clark's parents; indeed, the entire transcript for the sentencing phase comprises only eight pages. Counsel were given another opportunity at a later hearing to present mitigating evidence before imposition of sentence by the court, but once again only offered the testimony of the parents, with brief testimony of Clark.

The findings of the district court, adopted and affirmed by the Court of Appeals, demonstrate that Clark was examined by a state psychiatrist prior to trial who rendered a written opinion that, although Clark was competent to

stand trial, his bizarre behavior warranted a hospitalization for a complete psychiatric evaluation. Although Clark's counsel had this report in hand well before trial, they did not seek any further psychiatric evaluation of Clark, nor did they attempt to elicit possibly helpful testimony from the state psychiatrist. Psychiatric testimony introduced at the state habeas proceeding showed Clark was suffering from a diagnosed, debilitating mental illness. Further, the record shows that substantial mitigating testimony from lay witnesses was presented at the state habeas hearing, which would have been available to original trial counsel had they investigated. Among other things, it was shown that Clark was the product of a sordid family



background, whose mother was a lesbian and prostitute who attempted suicide twice, that Clark was raised during his early years by a madam in a house of prostitution, that Clark received severe burns over forty percent of his body in a childhood accident which seriously affected his personality, and that Clark's closest family member, his brother, was inexplicably murdered.

On this record, the district court and the Court of Appeals, in a per curiam opinion, properly applied the two-part test set forth in Stickland, and granted Clark a new sentencing hearing in state court. Counsel's failure to even seek out psychiatric testimony to determine its mitigating effect, and their failure to pursue mitigating testimony from lay



witnesses was unreasonable in face of the overwhelming evidence of guilt. Moreover, this ineffective assistance of counsel prejudiced Clark, as these omissions clearly undermines one's confidence in the proceedings, as found by the original sentencing court, the district court, and the Court of Appeals.

In summary, this case does not present a misapplication of the two-prong test in Stickland, but rather a considered evaluation of a factual setting which graphically demonstrates ineffective assistance of counsel resulting in prejudice to the accused. This was recognized by the Court of Appeals to the per curiam opinion and again by the same court in refusing to rehear the matter en banc. It should also be noted that



Petitioner's Application to Stay Mandate presented to this Court has been denied, even though all of the arguments presented in the Petition for Certiorari were included in support of the request for a stay. At present the district court's order that Clark be resentenced on or before January 15, 1987 is in effect.

CONCLUSION

For the foregoing reasons, the Petition for Certiorari should be denied.

Respectfully submitted,

HALL, SUROVELL, JACKSON
& COLTEN, P.C.



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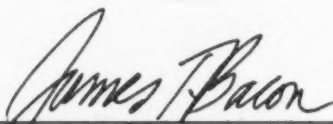
COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I, James T. Bacon, a member of this Court, hereby certify that on this 12th day of November, 1986, three copies of the Brief in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit in the above-entitled case were mailed, first class postage prepaid, to Jacqueline G. Epps, Senior Assistant



Attorney General, 101 North Eighth St.,
Richmond, Virginia 23219. I further
certify that all the parties required to
be served have been served.



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